

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

DOCKETING STATEMENT

Administrative Agency Review/Enforcement Proceedings

1. DOCKET NO.: 19-1978 2. DATE DOCKETED: 4/30/19

3. CASE NAME (Lead Parties Only)

National Labor Relations Board

Petitioner

v.

Demza Masonry, LLC

Respondent

4. TYPE OF CASE:

Review

☐

Enforcement

☒

5. CASE INFORMATION:

a. Identify agency whose order is to be reviewed: National Labor Relations Board

b. Give agency docket or docket number(s): 22-CA-208778, 22-CA-220318

c. Give date(s) of order(s): March 4, 2019

d. Is a request for rehearing or reconsideration pending at the agency? ☐ Yes ☒ No

e. Are any other cases involving the same underlying agency order pending in this Court or in any other court?

☐ Yes ☒ No

If Yes, identify name(s), docket number(s), and court(s):

f. Are any other cases, to counsel's knowledge, pending before the agency, this Court or the Supreme Court which involve substantially the same issues as the instant case presents? ☐ Yes ☒ No

If Yes, give name(s) of these cases and identify court/agency:

Signature: /s/ David Habenstreit

Date: 5/6/19

Name of Counsel or Pro Se Litigant (Print) David Habenstreit

Firm: National Labor Relations Board

Phone: (202) 273-2960

Address: 1015 Half St., S.E., Washington, D.C. 20570

Name of Party Represented: National Labor Relations Board

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter specifically referring to the challenged statement.

Newark, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DEMZA MASONRY, LLC

and

Cases 22-CA-208778
22-CA-220318

LOCAL 4, BRICKLAYERS AND ALLIED
CRAFTWORKERS' ADMINISTRATIVE
DISTRICT COUNCIL OF NEW JERSEY

ORDER

On January 18, 2019, Administrative Law Judge Robert A. Giannasi of the National Labor Relations Board issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Respondent has engaged in certain unfair labor practices, and recommended that it take specific action to remedy such unfair labor practices.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, the Board adopts the findings and conclusions of the Administrative Law Judge as contained in his Decision, and orders that the Respondent, Demza Masonry, LLC, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order of the Administrative Law Judge.

Dated, Washington, D.C., March 4, 2019.

By direction of the Board:

/s/ Leigh A. Reardon

Associate Executive Secretary

JD-04-19
Newark, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DEMZA MASONRY, LLC

Respondent

and

Cases 22-CA-208778
and 22-CA-220318

LOCAL 4, BRICKLAYERS AND ALLIED
CRAFTWORKERS' ADMINISTRATIVE DISTRICT
COUNCIL OF NEW JERSEY

Charging Party

Sharon Chau, Esq.

for the General Counsel.

Michael Scaraggi, Esq.,

for Respondent.

Robert O'Brien, Kevin Jarvis, Esqs.,

and *Matthew Madsen, Esq.* (on brief)

for Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Newark, New Jersey, on November 27 and 28, 2018. The consolidated complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio for their union activities in support of the Charging Party Union (hereafter, the Union). Respondent denied the essential allegations in the complaint. After the trial, the General Counsel and the Respondent filed briefs, which I have read and considered.

Based on the briefs and the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a limited liability company, with an office and place of business located in Whitehouse Station, New Jersey, is engaged as a contractor in the commercial construction industry doing brick, block and masonry construction work. I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also find, as Respondent also admits, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Background

Respondent is a non-union employer, owned by Willie Dempsey. Tr. 17. The Union has made efforts to organize Respondent's bricklayer and mason employees, first by having out-of-work members become employed by Respondent and attempting to organize from the inside; and, secondly, by picketing Respondent's job site from the outside. It is alleged that participation in the Union's organizational efforts resulted in the discriminatory discharge of Union-member and employee Jeff Dunleavy from Respondent's Annin Lofts job in Verona, New Jersey, on October 27, 2017; and of Union-members and employees Jose Hernandez, John Smith and Marcello Ligero from its 235 Grand job in Jersey City, New Jersey, on May 4, 2018. Respondent's foreman and supervisor on those jobs at all relevant times was Richard Piez. Tr. 16-17. It is undenied that the employees mentioned above were in fact discharged on the dates indicated. The only question to be determined here is whether the reason for the discharges was an unlawful one.¹

The Discharge of Dunleavy

Jeff Dunleavy has been a bricklayer and a member of the Union since 1979. He became employed by Respondent and placed on the Verona job on October 16, 2017. He worked there until he was discharged by Foreman Piez on Friday, October 27, 2017. There were no complaints about his work or his attendance. Tr. 98-99, 110, 117.

¹ Piez, who made or participated in the discharge decisions, testified that he simply laid off the employees because to discharge them would have denied them unemployment benefits. In the circumstances of this case the semantic difference is immaterial. The employees were effectively discharged because it is clear from Piez's testimony that Respondent made and effectuated a decision to end its association with the employees and never wanted to call them back—nor did it ever do so.

Dunleavy did not notify Respondent that he was a member of the Union when he was hired. He did so by presenting a so-called "coming out" letter to Piez during break time on Wednesday, October 25. Tr. 103. The letter, signed by Dunleavy and addressed to Respondent, stated that he was a member of the Union and supported the Union's "efforts to organize your company and its employees into the Union." The letter continued by stating, "I will do this in my free time while continuing to work as your employee." G.C. Exh. 3. Piez took the letter, read it, and commented, "so you're a union bricklayer? Who did you work for?" Dunleavy replied, "several—quite a few companies." Tr. 100-101.

Dunleavy worked at the Verona job the next day, Thursday, without incident. But on Friday, October 27, before work at about 6:15 am, Dunleavy passed out union literature to fellow employees near the jobsite on the public sidewalk along a public street where the employees parked their cars. Tr. 105-106. The literature mentioned the benefits of union representation and specifically identified the Union. G.C. Exh. 6. Dunleavy also gave a copy of the literature to Piez, who said he did not need it. Piez said he had been a member of the Union, and asked, "do you know who you're working for?" Piez also stated that he did not want anything "to do with union literature on the job." This all took place before work began at 7am and off the job site. Tr. 106-108.

After he completed passing out the union literature, Dunleavy returned to his parked car, put the undistributed literature in the car, got his tools and walked onto the job site. Tr. 107. When Dunleavy arrived on the job site ready for work, Piez took him aside and told him he could not work there and had to leave, stating that Dunleavy could not pass out union literature on the job. Dunleavy protested that he had not done so on the job, to no avail, so he left. Tr. 109-110, 117-118.

The above is based on the credited testimony of Dunleavy, who was an extremely reliable witness and testified in great detail about the above encounters. He was unshaken on cross-examination and demonstrated a truthful demeanor. He was also corroborated in significant respects. Dunleavy's testimony about presenting the letter to Piez and the short conversation between the two thereafter was supported by a video and voice recording that was received in evidence as G.C. Exh. 5. Tr. 101-105. Fellow employee and Union member Maurice Bell, who did not pass out union literature, confirmed Dunleavy's testimony about the latter's passing out union literature and the fact that Piez took Dunleavy aside at the beginning of the work day on the day Dunleavy was discharged. Tr. 121-130.

Respondent's timesheet records (G.C. Exh. 7), which were filled out by Piez (Tr. 163-165), show that Dunleavy was the only bricklayer on the Verona job who worked on Thursday, October 26, but did not work on Friday, October 27. The records also show that 4 bricklayers worked on that job on the next day, Saturday, October 28, apparently on overtime. On the following Monday, the records show that 8 bricklayers worked on the job, one more than the number who worked on the previous Thursday. This shows conclusively that there was plenty of bricklayer work on the day Dunleavy was fired.

Foreman Piez testified about the Dunleavy matter. Piez initially testified he could not recollect receiving Dunleavy's "coming out" letter, even after being shown the letter. Tr. 27, 30-31. But when later called as a witness by Respondent, and after Dunleavy testified about the letter and the supporting video and voice recording, Piez had nothing to say about the incident. Dunleavy's testimony on that incident thus stands unrebutted.

The rest of Piez's testimony about the Dunleavy part of the case was unreliable. It was cursory, evasive and contradictory. Piez testified that Dunleavy's "workmanship was terrible and he was slow." Tr. 146. But he did not testify that that was why he terminated Dunleavy. Nor did he provide any examples, corroboration or other supporting testimony or documents about Dunleavy's work, including any complaints about Dunleavy's work or attendance. Significantly, after an evasive answer to my question about what he told Dunleavy when he terminated him, Piez testified that he discharged Dunleavy, not because he was a poor employee, but for lack of work. Tr. 150. That is refuted by the documentary evidence discussed above. Those records also belie Piez's assertion (Tr. 150-152) that records would support his testimony that other bricklayers were laid off the same day as Dunleavy was. As the records show, Dunleavy was the only employee terminated on that day.

Piez also denied that he terminated Dunleavy for passing out union literature. Tr. 148. But I find that testimony not credible. Piez did not contradict Dunleavy's testimony that he attempted to pass out a copy of the union literature to Piez, Dunleavy's testimony about Piez's reply to Dunleavy at that time, or even Dunleavy's testimony about their conversation when Dunleavy was terminated, all of which support the notion that Piez was concerned about Dunleavy passing out union literature. Indeed, based on his demeanor and the other factors mentioned above, I found Piez to be a completely unreliable witness. His testimony about Dunleavy's work was unspecific and basically the same negative way he generally described the work of the other employees he discharged in this case. There was a complete lack of the kind of candor and detail that would be expected of a person who was making a legitimate decision to terminate an employee for cause.

The Discharges of Hernandez, Smith and Ligerio

Employees and long-time members of the Union Jose Hernandez, John Smith and Marcello Ligerio were discharged on May 4, 2018, the day after they picketed the Jersey City job on behalf of the Union. They had been working for Respondent on that job since early March 2018. Tr. 41, 61, 80. The job involved the brick and block construction on a building of some 48 floors. When the three employees were discharged the construction had not quite reached the midpoint of the building and there was much work remaining to be done, particularly on the block work that they were doing. Tr. 48-49, 55-56, 68-69, 89-90. None of the three employees had received complaints about their work. Tr. 47-50, 59, 69-70, 90.²

² Ligerio candidly testified in his direct testimony that he was told, on one occasion, by Willie

On May 2, the Union set up a picket line at the work site with signs identifying the Union and its concerns about the Respondent and its pay and working conditions. The picketing lasted the entire day, from 7 am to 3:30 pm. Tr. 43, 65, 85-86. Neither Hernandez, Smith nor Ligerio participated in the picketing that day, but they testified that, as instructed by Union representatives, they presented envelopes containing letters from the Union to Foreman Piez similar to the one presented to Piez by Dunleavy at the Annin Lofts job. Tr. 43, 62-64, 82-84. The uncontradicted testimony of Ligerio is that, when presented with the letter, Piez asked Ligerio why he was not working for a union contractor and he replied that there was not union work at the time. Tr. 64. All three employees had, however, worn clothing or other items that clearly carried the Union name or other identifiers throughout their employment without any objection from Piez or any other supervisor of Respondent. Tr. 54-55, 71-72, 93-94.

The next day, May 3, the three employees joined the picket line. It is uncontradicted that Piez and Willie Dempsey observed them on the picket line. Tr. 46-47, 65-67, 70-71, 85-88. When they reported for work the next day, May 4, they were not permitted to work and were effectively terminated. It is unclear whether two of the three employees were given a reason for their terminations. Ligerio, however, testified he was told that there were no more blocks for them to work on. But he also testified that there were sufficient blocks at the job site and a number of other bricklayers were permitted to work that day, testimony that was supported by other witnesses. Tr. 48-49, 68-69, 72-73, 77, 89-90. Apparently, only one member of the Union, Miguel, remained on the job after the terminations of May 4, but he did not participate in the picketing the day before. Tr. 48, 57, 65, 68, 73, 77, 86.³

The above is based on the composite credible testimony of Hernandez, Smith and Ligerio, much of which was uncontradicted. Their testimony did not mesh completely on all details, which is to be expected from candid witnesses testifying about similar events. But on significant issues their testimony was mutually corroborative and reliable. In assessing their demeanor, I felt that they were testifying candidly and truthfully. The substance of their testimony is also bolstered by consideration of the documentary evidence discussed below.

Respondent's timesheet records for the Jersey City job (G.C. Exh. 8) confirm that Smith, Hernandez and Ligerio did not work on May 3. The records also show that 10 bricklayers did work that day and that 10 bricklayers worked the next day. Fifteen bricklayers worked on the day before, May 2; Eleven bricklayers worked on the job the following Monday, May 7; and 17 bricklayers worked on the job on Tuesday, May 8. The diminution in work on May 2 and 3 was likely because of the Union picketing and I conclude that there was no work-related reason for the downturn in the bricklayer

Dempsey to correct a wall that was out of level. The wall had been done by another employee, but Ligerio and the other employee redid the wall. Tr. 69-70.

³ It appears that 2 other employees, apparently from New York, were also terminated at this time, but there is no evidence on this record of who they were or why they were terminated. Tr. 58-59.

workforce for those two days. The timesheet records also show that there was plenty of work for bricklayers at the time of the discharges of Hernandez, Smith and Ligerio. Indeed, the records also show that additional new employees worked on the job thereafter who did not work before the discharges of Hernandez, Smith and Ligerio. In fact, by the week ending May 20, the bricklayers on the job totaled 22, twice as many as were on the job on May 4, the date of the discharges.

Piez was Respondent's only witness concerning the discharges of May 4. His testimony on this part of the case, as in the Dunleavy part of the case, was general and cursory. It was similarly unreliable. Piez did not controvert much of the credible testimony of Hernandez, Smith and Ligerio discussed above. He did not, for example, refute Ligerio's testimony about the exchange between the two during Ligerio's presentation of the union identification letter to Piez. And he did not deny that the employees had presented envelopes to him containing what the employees testified were letters given them by officials of the Union to present to Respondent, although he did testify that he did not open the envelopes. Piez did testify that the work of those three employees was not satisfactory, suggesting, without explicitly stating, that that was the reason that they were terminated on May 4. Tr. 142-145. Importantly, however, he did not specifically testify about any occasion where he criticized the work of Hernandez, Smith and Ligerio or that he disciplined or warned them about their work, thus failing to counter their testimony that they were not criticized for their work, at least by him. Moreover, it defies belief that Respondent would have tolerated their alleged "terrible" work performance, as asserted by Piez (Tr. 146), for several months and not terminated them for that reason until the day after they participated in picketing sponsored by the Union.

Piez's testimony was not only lacking in meaningful detail, but blatantly self-serving, as, for example, when he testified, in an expansive and conclusory manner, that none of the bricklayers who testified at the hearing did satisfactory work. Tr. 145. Piez also testified that there was a lack of materials for continued work for the three Union employees terminated. But there was no corroborating evidence for that testimony such as employer records or other testimony that could reliably support Piez on that score. Thus, here again, Piez's testimony fails to impugn the credible testimony that there were blocks available and more work to be done on the day of the discharge. Indeed, the timesheet records mentioned above effectively refute Piez's testimony. Those records show there was plenty of work for bricklayers at the time, and, by implication, that there was plenty of material to support the work of more bricklayers on May 4. In fact more bricklayers, including new ones, were on the job in the days and weeks following the discharges. In all the circumstances, I cannot credit any of the testimony of Piez on this part of the case, as I could not on the Dunleavy part of the case.

B. Discussion and Analysis

In determining whether an employer's adverse employment actions are unlawful, the Board applies the mixed motive analysis set forth in *Wright Line*, 251 NLRB 1083

(1980), enf'd on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel must satisfy an initial burden of showing by a preponderance of the evidence that the employee's protected or union activity was a motivating factor in a respondent's adverse action. If the General Counsel meets that initial burden, the burden shifts to the respondent to show that it would have taken the same action even absent the employee's protected activity. The respondent does not meet its burden merely by showing that it had a legitimate reason for its action; it must persuasively demonstrate that it would have taken the same action in the absence of the protected conduct. And if the respondent's proffered reasons are pretextual—either false or not actually relied on—the respondent fails by definition to meet its burden of showing it would have taken the action for those reasons absent the protected activity. See *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003); and *BHC Northwest Psychiatric Hospital*, 365 NLRB No. 79, slip op. 6 (2017).

A showing of pretext also supports the initial showing of animus and discrimination. See *Wright Line*, supra, 251 NLRB at 1088 n.12, citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (where a respondent's reasons are false, it can be inferred “that the [real] motive is one that the [respondent] desires to conceal—an unlawful motive—at least where . . . the surrounding facts tend to reinforce that inference.”). Moreover, a trier of fact may not only reject a witness's testimony about his or her reasons for an adverse action, but also find that the truth is the opposite of that testimony. *Pratt (Corrugated Logistics), LLC*, 360 NLRB 304, 314 (2014), citing *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962).

Applying the above principles to the credited testimony and facts of this case, I find that Respondent discharged employees Dunleavy, Hernandez, Smith, and Ligerio because of their affiliation with and activities on behalf of the Union. I also find that Respondent's reasons for the discharges, based entirely on the discredited testimony of Piez, are pretexts that strengthen the inference of discrimination.

Dunleavy was discharged immediately after he passed out Union literature, which was done off the job and on his own time. The timing and circumstances of the discharge are more than enough to support the finding of discrimination. But the credited testimony also shows that this was the very reason given for the discharge by Piez, although he suggested, erroneously, that Dunleavy was passing out the literature on the job. No one else passed out Union literature or was discharged on the same day as Dunleavy and Piez's testimony about the matter was not credible. The violation here is clear.

Viewed in the context of the union-based discrimination against Dunleavy, the discharges of Hernandez, Smith and Ligerio on May 4 were clearly for the same reason. The latter employees were discharged at the beginning of the work day following the one on which they were seen by Respondent's officials picketing the job site on behalf of the Union. Here again the timing strongly supports the finding of discrimination. No non-picketing employees were discharged. Piez's discredited testimony about the

discharges does not rescue Respondent. As shown above, his suggestion that he discharged the employees because their work was “terrible” or because there was lack of work was a pretext and thus bolsters the finding of a violation.

5 Conclusions of Law

1. By discriminatorily discharging employees Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio, for their affiliation with and activities on behalf of the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

2. The above violations constitute unfair labor practices within the meaning of the Act.

15 Remedy

Having found that Respondent discriminatorily discharged the individuals named above, Respondent will be ordered to post the usual notice. It must also offer each of them reinstatement and make each of them whole for any loss of earnings and benefits they suffered as a result of the discrimination against them from the dates of their discharge until the date of their proper reinstatement, in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Search for work and interim employment expenses shall be paid in accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017). Compensation for the adverse consequences of receiving a lump sum backpay award and proper allocation of the backpay award shall be in accordance with *LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014) and *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143, slip op. at 1 (2016).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended⁴

ORDER

Respondent, Demza Masonry, LLC, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Discriminatorily discharging or otherwise disciplining employees for their union affiliation or union activities.

⁴ If no exceptions are filed, as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer reinstatement to Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio Robert Weeks and Michael O'Leary to their former positions, or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges to which they would have been entitled had they not been discriminated against.

(b) Make Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this order.

(c) Compensate Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio for the adverse consequences, if any, of receiving a lump backpay award, and file with the Regional Director of Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

(d) Compensate Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio, and, within 3 days thereafter, notify the above individuals in writing that this has been done and the discharges will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(g) Within 14 days after service by the Region, post, at its Whitehouse Station, New Jersey facility, as well as all of its construction job sites, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places at the above locations, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email,

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

JD-04-19

posting on an intranet or an internet site, and/or other electronic means, if the Respondent communicates with employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 27, 2017.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C., January 18, 2019.

A handwritten signature in black ink, appearing to read "Robert A. Giannasi", written over a horizontal line.

Robert A. Giannasi
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain with us or your behalf.
Act together with other employees for your
benefit and protection.
Choose not to engage in any of these
protected activities.

WE WILL NOT discriminatorily discharge or otherwise discipline employees because of their affiliation with or activities on behalf of Local 4, Bricklayers and Allied Craftworkers' Administrative District Council of New Jersey or any other union.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL offer reinstatement to Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio to their former positions, or if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges to which they would have been entitled had they not been discriminated against.

WE WILL make Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio whole, with interest, for any loss of earnings and other benefits they suffered as a result of our discrimination against them.

Demza Masonry, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

20 Washington Place, 5th Floor, Newark, NJ 07102-3110
(973) 645-2100, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/22-CA-208778 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OF COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (862) 229-7055.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 19-1978
v.	:	
	:	Board Case Nos.:
DEMZA MASONRY, LLC	:	22-CA-208778
	:	22-CA-220318
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's appearance of counsel and docketing statement, in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

Joeseeph Speranza
Demza Masonry, LLC
Demza Masonry Construction and
Speranza Brickwork, Inc.
15 High Street
Whitehouse Station, NJ 08889-4010

Michael T. Scaraggi
Oransky, Scaraggi & Borg, P.C.
175 Fairfield Ave., Ste 1A
West Caldwell, NJ 07006-6415

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 6th day of May, 2019